

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILLS NOS. 613,  
1030 & 899**

93RD GENERAL ASSEMBLY

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Reported from the Committee on Commerce, Energy and the Environment, March 2, 2006, with recommendation that the Senate Committee Substitute do pass.

3468S.08C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To repeal sections 407.1095, 407.1098, 407.1101, 407.1104, and 570.223, RSMo, and to enact in lieu thereof six new sections relating to telephone communication, with penalty provisions and an emergency clause for certain sections.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 407.1095, 407.1098, 407.1101, 407.1104, and 570.223, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 407.1095, 407.1098, 407.1101, 407.1104, 570.222, and 570.223, to read as follows:

407.1095. As used in sections 407.1095 to 407.1110, the following words and phrases mean:

(1) "Caller identification service", a type of telephone service which permits telephone subscribers to see the telephone number of incoming telephone calls;

(2) "Residential subscriber", a person who has subscribed to **any** residential telephone service [from a local exchange company], **including wireless telephone service**, or the other persons living or residing with such person;

(3) "**Subscriber**", **wireless business subscriber or a residential subscriber**;

(4) "Telephone solicitation", any voice [communication over a telephone line from a live operator, through the use of ADAD equipment or by other means], **facsimile, graphic imaging, or data communication, including text**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

15 **messaging communications**, for the purpose of encouraging the purchase or  
16 rental of, or investment in, property, goods or services, but does not include  
17 communications:

18 (a) To any [residential] subscriber with that subscriber's prior express  
19 invitation or permission;

20 (b) By or on behalf of any person or entity with whom a [residential]  
21 subscriber has had a business contact within the past one hundred eighty days  
22 or a current business or personal relationship;

23 (c) By or on behalf of an entity organized pursuant to Chapter 501(c)(3)  
24 of the United States Internal Revenue Code, while such entity is engaged in  
25 fund-raising to support the charitable purpose for which the entity was  
26 established provided that a bona fide member of such exempt organization makes  
27 the voice communication;

28 (d) By or on behalf of any entity over which a federal agency has  
29 regulatory authority to the extent that:

30 a. Subject to such authority, the entity is required to maintain a license,  
31 permit or certificate to sell or provide the merchandise being offered through  
32 telemarketing; and

33 b. The entity is required by law or rule to develop and maintain a no-call  
34 list;

35 (e) By a natural person responding to a referral, or working from his or  
36 her primary residence, or a person licensed by the state of Missouri to carry out  
37 a trade, occupation or profession who is setting or attempting to set an  
38 appointment for actions relating to that licensed trade, occupation or profession  
39 within the state or counties contiguous to the state;

40 **(5) "Wireless business subscriber", a person who, primarily for**  
41 **business use, has subscribed to any wireless telephone service.**

407.1098. [1.] No person or entity shall make or cause to be made any  
2 telephone solicitation to [the telephone line of] any [residential] subscriber in  
3 this state who has given notice to the attorney general, in accordance with rules  
4 promulgated pursuant to section 407.1101 of such subscriber's objection to  
5 receiving telephone solicitations.

6 [2. This section shall take effect on July 1, 2001.]

407.1101. 1. The attorney general shall establish and provide for the  
2 operation of a database to compile a list of telephone numbers of [residential]  
3 subscribers who object to receiving telephone solicitations. [The attorney general

4 shall have such database in operation no later than July 1, 2001.]

5           2. [No later than January 1, 2001,] The attorney general shall  
6 promulgate rules and regulations governing the establishment of a state no-call  
7 database as he or she deems necessary and appropriate to fully implement the  
8 provisions of sections 407.1095 to 407.1110. The rules and regulations shall  
9 include those which:

10           (1) Specify the methods by which each [residential] subscriber may give  
11 notice to the attorney general or its contractor of his or her objection to receiving  
12 such solicitations or revocation of such notice. There shall be no cost to the  
13 subscriber for joining the database;

14           (2) Specify the length of time for which a notice of objection shall be  
15 effective and the effect of a change of telephone number on such notice;

16           (3) Specify the methods by which such objections and revocations shall be  
17 collected and added to the database;

18           (4) Specify the methods by which any person or entity desiring to make  
19 telephone solicitations will obtain access to the database as required to avoid  
20 calling the telephone numbers of [residential] subscribers included in the  
21 database, including the cost assessed to that person or entity for access to the  
22 database;

23           (5) Specify such other matters relating to the database that the attorney  
24 general deems desirable.

25           3. If the Federal Communications Commission establishes a single  
26 national database of telephone numbers of subscribers who object to receiving  
27 telephone solicitations pursuant to 47 U.S.C., Section 227(c)(3), the attorney  
28 general shall include that part of such single national database that relates to  
29 Missouri in the database established pursuant to this section.

30           4. Information contained in the database established pursuant to this  
31 section shall be used only for the purpose of compliance with section 407.1098 and  
32 this section or in a proceeding or action pursuant to section 407.1107. Such  
33 information shall not be considered a public record pursuant to chapter 610,  
34 RSMo.

35           5. In April, July, October and January of each year, the attorney general  
36 shall be encouraged to obtain subscription listings of [consumers] **subscribers**  
37 in this state who have arranged to be included on any national do-not-call list and  
38 add those [names] **telephone numbers** to the state do-not-call list.

39           6. The attorney general may utilize moneys appropriated from general

40 revenue and moneys appropriated from the merchandising practices revolving  
41 fund established in section 407.140 for the purposes of establishing and operating  
42 the state no-call database.

43           7. Any rule or portion of a rule, as that term is defined in section 536.010,  
44 RSMo, that is created under the authority delegated in sections 407.1095 to  
45 407.1110 shall become effective only if it complies with and is subject to all of the  
46 provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This  
47 section and chapter 536, RSMo, are nonseverable and if any of the powers vested  
48 with the general assembly pursuant to chapter 536, RSMo, to review, to delay the  
49 effective date or to disapprove and annul a rule are subsequently held  
50 unconstitutional, then the grant of rulemaking authority and any rule proposed  
51 or adopted after August 28, 2000, shall be invalid and void.

          407.1104. 1. Any person or entity who makes a telephone solicitation to  
2 [the telephone line of] any [residential] subscriber in this state shall, at the  
3 beginning of such [call] **solicitation**, state clearly the identity of the person or  
4 entity initiating the [call] **solicitation**.

5           2. No person or entity who makes a telephone solicitation [to the  
6 telephone line of a residential subscriber] in this state shall knowingly use any  
7 method to block or otherwise circumvent [such] **any** subscriber's use of a caller  
8 identification service.

**570.222. 1. As used in this section the following terms shall**  
2 **mean:**

3           **(1) "Procure", in regard to a telephone record means to obtain by**  
4 **any means, whether electronically, in writing, or in oral form, with or**  
5 **without consideration;**

6           **(2) "Telecommunications carrier", any corporation providing**  
7 **telecommunications service as defined in section 386.202, RSMo. For**  
8 **purposes of this section only, the definition of telecommunications**  
9 **carrier includes a commercial mobile radio service provider defined in**  
10 **47 U.S.C. 332(d);**

11           **(3) "Telephone record", any information retained by a**  
12 **telecommunications carrier that relates to the telephone numbers**  
13 **dialed by the customer or the incoming numbers of calls directed to a**  
14 **customer, or other data related to such calls typically contained on a**  
15 **customer telephone bill such as the time the call started and ended, the**  
16 **duration of calls, the time of day calls were made and any charges**

17 applied. For purposes of this section any information collected and  
18 retained by or on behalf of customers utilizing Caller I.D., or other  
19 similar technology, does not constitute a telephone record.

20 2. A person commits the crime of obtaining, receiving, or selling  
21 a telephone record without consent if such person:

22 (1) Knowingly procures, attempts to procure, solicits, or  
23 conspires with another to procure, a telephone record of any resident  
24 of this state without the authorization of the customer to whom the  
25 record pertains; or

26 (2) By fraudulent, deceptive, or false means:

27 (a) Knowingly sells, or attempts to sell, a telephone record of any  
28 resident of this state without the authorization of the customer to  
29 whom the record pertains; or

30 (b) Receives a telephone record of any resident of this state  
31 knowing that such record has been obtained without the authorization  
32 of the customer to whom the record pertains or by fraudulent,  
33 deceptive, or false means.

34 3. Obtaining, receiving, or selling a telephone record without  
35 consent is a felony punishable as follows:

36 (1) A fine of not less than five hundred dollars nor more than one  
37 thousand dollars or imprisonment for not more than two years, or both  
38 such fine and imprisonment if the violation of subsection 2 of this  
39 section involves a single telephone record of a resident of this state;

40 (2) A fine of not less than one thousand dollars nor more than  
41 five thousand dollars or imprisonment for not more than five years, or  
42 both such fine and imprisonment if the violation of subsection 2 of this  
43 section involves two to ten telephone records of a resident of this state;

44 (3) A fine of not less than five thousand dollars and not more  
45 than ten thousand dollars or imprisonment for not more than ten years,  
46 or both such fine and imprisonment if the violation of subsection 2 of  
47 this section involves more than ten telephone records of a resident of  
48 this state.

49 4. No provision of this section shall be construed so as to prevent  
50 any action by a law enforcement agency or state agency with  
51 jurisdiction over telecommunications companies as defined in section  
52 386.020, RSMo, or any officer, employee, or agent of such agency, to  
53 obtain telephone records in connection with the performance of the

54 **official duties of the agency.**

55 **5. No provision of this section shall be construed to prohibit a**  
56 **telecommunications carrier from obtaining, using, disclosing, or**  
57 **permitting access to any telephone record, either directly or indirectly**  
58 **through its agents:**

59 **(1) As otherwise authorized by law;**

60 **(2) With the lawful consent of the customer or subscriber;**

61 **(3) As may be necessarily incident to the rendition of the service**  
62 **or to the protection of the rights or property of the provider of that**  
63 **service, or to protect users of those services and other carriers from**  
64 **fraudulent, abusive, or unlawful use of, or subscription to, such**  
65 **services;**

66 **(4) To a governmental entity, if the telecommunications carrier**  
67 **reasonably believes that an emergency involving immediate danger of**  
68 **death or serious physical injury to any person justifies disclosure of the**  
69 **information; or**

70 **(5) To the National Center for Missing and Exploited Children,**  
71 **in connection with a report submitted thereto under section 227, RSMo,**  
72 **of the Victims of Child Abuse Act of 1990;**

73 **(6) No provision of this section shall apply to or expand upon the**  
74 **obligations and duties of any telephone company, its agents, employees**  
75 **or contractors to protect telephone records beyond those otherwise**  
76 **established by federal or state law, including but not limited to**  
77 **provisions governing Customer Proprietary Network Information in**  
78 **section 222 of the Communications Act of 1934, as amended, 47 U.S.C.**  
79 **222 and regulations promulgated thereunder.**

80 **6. In a civil action, a customer or telecommunications carriers**  
81 **or both whose telephone records were procured, sold, or received in**  
82 **violation of subsection 2 of this section may recover from the person or**  
83 **entity that violated subsection 2 of this section such relief as may be**  
84 **appropriate including, but not limited to, the following:**

85 **(1) Such preliminary and other equitable or declaratory relief as**  
86 **may be appropriate;**

87 **(2) Damages as described in subsection 7 of this section; and**

88 **(3) Reasonable attorney fees and other litigation costs**  
89 **reasonably incurred.**

90 **7. The court may assess as damages in a civil action under this**

91 section the sum of the actual damages suffered by the plaintiff and any  
92 profits made by the violator as a result of the violation, but in no case  
93 shall a person entitled to recover receive less than the sum of one  
94 thousand dollars. The court may assess as punitive damages an amount  
95 not to exceed ten times the amount awarded for actual damages and  
96 illicit profit. In the case of a successful action to enforce liability  
97 under this section, the court may assess costs of the action, together  
98 with reasonable attorney fees determined by the court.

99 8. A civil action under this section may not be commenced later  
100 than two years after the date upon which the claimant first discovered  
101 or had a reasonable opportunity to discover the violation.

102 9. Telecommunications carriers that maintain telephone records  
103 of a resident of this state shall establish reasonable procedures to  
104 protect against unauthorized or fraudulent disclosure of such records  
105 which could result in substantial harm or inconvenience to any  
106 customer. For purposes of this section, a telecommunications carrier's  
107 procedures shall be deemed reasonable if the telecommunications  
108 carrier complies with the provisions governing Customer Proprietary  
109 Network Information in section 222 of the Communications Act of 1934,  
110 as amended, 47 U.S.C. 222 and regulations promulgated thereunder.

111 10. No private right of action is authorized under subsection 9  
112 of this section.

113 11. No provision of this section shall apply to a  
114 telecommunications carrier, its agents and representatives or agents or  
115 representatives, who reasonably and in good faith acts under  
116 subsection 5 or 9 of this section, notwithstanding any later  
117 determination that such action was not in fact authorized.

570.223. 1. A person commits the crime of identity theft if he or she  
2 knowingly and with the intent to deceive or defraud obtains, possesses, transfers,  
3 uses, or attempts to obtain, transfer or use, one or more means of identification  
4 not lawfully issued for his or her use.

5 2. The term "means of identification" as used in this section includes, but  
6 is not limited to, the following:

- 7 (1) Social Security numbers;
- 8 (2) Drivers license numbers;
- 9 (3) Checking account numbers;
- 10 (4) Savings account numbers;

- 11 (5) Credit card numbers;
- 12 (6) Debit card numbers;
- 13 (7) Personal identification (PIN) code;
- 14 (8) Electronic identification numbers;
- 15 (9) Digital signatures;
- 16 (10) Any other numbers or information that can be used to access a
- 17 person's financial resources;
- 18 (11) Biometric data;
- 19 (12) Fingerprints;
- 20 (13) Passwords;
- 21 (14) Parent's legal surname prior to marriage;
- 22 (15) Passports; [or]
- 23 (16) Birth certificates; **or**
- 24 **(17) Telephone record as defined in section 570.222.**

25 3. A person found guilty of identity theft shall be punished as follows:

- 26 (1) Identity theft or attempted identity theft which does not result in the
- 27 theft or appropriation of credit, money, goods, services, or other property is a
- 28 class B misdemeanor;
- 29 (2) Identity theft which results in the theft or appropriation of credit,
- 30 money, goods, services, or other property not exceeding five hundred dollars in
- 31 value is a class A misdemeanor;
- 32 (3) Identity theft which results in the theft or appropriation of credit,
- 33 money, goods, services, or other property exceeding five hundred dollars and not
- 34 exceeding five thousand dollars in value is a class C felony;
- 35 (4) Identity theft which results in the theft or appropriation of credit,
- 36 money, goods, services, or other property exceeding five thousand dollars and not
- 37 exceeding fifty thousand dollars in value is a class B felony;
- 38 (5) Identity theft which results in the theft or appropriation of credit,
- 39 money, goods, services, or other property exceeding fifty thousand dollars in value
- 40 is a class A felony.

41 4. In addition to the provisions of subsection 3 of this section, the court

42 may order that the defendant make restitution to any victim of the

43 offense. Restitution may include payment for any costs, including attorney fees,

44 incurred by the victim:

- 45 (1) In clearing the credit history or credit rating of the victim; and
- 46 (2) In connection with any civil or administrative proceeding to satisfy any

47 debt, lien, or other obligation of the victim arising from the actions of the  
48 defendant.

49         5. In addition to the criminal penalties in subsections 3 and 4 of this  
50 section, any person who commits an act made unlawful by subsection 1 of this  
51 section shall be liable to the person to whom the identifying information belonged  
52 for civil damages of up to five thousand dollars for each incident, or three times  
53 the amount of actual damages, whichever amount is greater. A person damaged  
54 as set forth in subsection 1 of this section may also institute a civil action to  
55 enjoin and restrain future acts that would constitute a violation of subsection 1  
56 of this section. The court, in an action brought under this subsection, may award  
57 reasonable attorneys' fees to the plaintiff.

58         6. If the identifying information of a deceased person is used in a manner  
59 made unlawful by subsection 1 of this section, the deceased person's estate shall  
60 have the right to recover damages pursuant to subsection 5 of this section.

61         7. Civil actions under this section must be brought within five years from  
62 the date on which the identity of the wrongdoer was discovered or reasonably  
63 should have been discovered.

64         8. Civil action pursuant to this section does not depend on whether a  
65 criminal prosecution has been or will be instituted for the acts that are the  
66 subject of the civil action. The rights and remedies provided by this section are  
67 in addition to any other rights and remedies provided by law.

68         9. This section and section 570.224 shall not apply to the following  
69 activities:

70             (1) A person obtains the identity of another person to misrepresent his or  
71 her age for the sole purpose of obtaining alcoholic beverages, tobacco, going to a  
72 gaming establishment, or another privilege denied to minors. Nothing in this  
73 subdivision shall affect the provisions of subsection 10 of this section;

74             (2) A person obtains means of identification or information in the course  
75 of a bona fide consumer or commercial transaction;

76             (3) A person exercises, in good faith, a security interest or right of offset  
77 by a creditor or financial institution;

78             (4) A person complies, in good faith, with any warrant, court order, levy,  
79 garnishment, attachment, or other judicial or administrative order, decree, or  
80 directive, when any party is required to do so;

81             (5) A person is otherwise authorized by law to engage in the conduct that  
82 is the subject of the prosecution.

83           10. Any person who obtains, transfers, or uses any means of identification  
84 for the purpose of manufacturing and providing or selling a false identification  
85 card to a person under the age of twenty-one for the purpose of purchasing or  
86 obtaining alcohol shall be guilty of a class A misdemeanor.

87           11. Notwithstanding the provisions of subdivision (1) or (2) of subsection  
88 3 of this section, every person who has previously pled guilty to or been found  
89 guilty of identity theft or attempted identity theft, and who subsequently pleads  
90 guilty to or is found guilty of identity theft or attempted identity theft of credit,  
91 money, goods, services, or other property not exceeding five hundred dollars in  
92 value is guilty of a class D felony and shall be punished accordingly.

93           12. The value of property or services is its highest value by any  
94 reasonable standard at the time the identity theft is committed. Any reasonable  
95 standard includes, but is not limited to, market value within the community,  
96 actual value, or replacement value.

97           13. If credit, property, or services are obtained by two or more acts from  
98 the same person or location, or from different persons by two or more acts which  
99 occur in approximately the same location or time period so that the identity thefts  
100 are attributable to a single scheme, plan, or conspiracy, the acts may be  
101 considered as a single identity theft and the value may be the total value of all  
102 credit, property, and services involved.

          Section B. Because of the need to protect the consumers of the state of  
2 Missouri, the enactment of sections 570.222 and 570.223 of this act is deemed  
3 necessary for the immediate preservation of the public health, welfare, peace and  
4 safety, and is hereby declared to be an emergency act within the meaning of the  
5 constitution, and the enactment of sections 570.222 and 570.223 of this act shall  
6 be in full force and effect upon its passage and approval.

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